

REMARKS

I. Introduction

Claims 21, 22, 24 to 30 and 32 to 44 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

II. Rejection of Claims 21, 22, 24 to 30 and 32 to 44 Under 35 U.S.C. §112

Claims 21, 22, 24 to 30 and 32 to 44 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Office Action contends that "[t]he original specification does not provide support for the grate 'covering' the opening." Office Action at page 2. In addition, the Office Action contends that "[t]he grate is within a portion of the opening and prevents tissue from entering therein, but it does not 'cover' the opening." Office Action at page 2. Applicant has amended claims 21, 30, 38 and 41 to recite "the grate partially covering the opening." Applicant maintains that these amendments are fully supported by the original specification, as shown for instance in Figures 1 and 4.

III. Request For Interference

Applicants respectfully request that, since it is believed that all of the pending claims of the present application are now in condition for allowance, an interference be declared between claims 21, 22, 24 to 30 and 32 to 44 of the present application and claims 1 to 39 of U.S. Patent No. 6,386,199 ("the '199 patent"), for the reasons set forth in Applicant's previously filed "Amendment and Request for Interference" filed in the U.S. Patent and Trademark Office on May 13, 2003 and additionally for the reasons set forth below.

As set forth above, Applicant has amended claims 21, 30, 38 and 41 to recite "the grate partially covering the opening." The Specification states at page 17, lines 27 to 33 that "[t]he bars and grates 143 act to restrain any anatomical portion ... from entering into and blocking or partially blocking, the mask opening 111', thereby preventing obstruction of the delivery or removal of gases from the respiratory system of the patient P."

Claims 1, 18, 30 and 35 of the '199 patent recite "a grate covering the opening." The '199 patent states that "FIG. 7A further includes a plurality of bars 452 forming a grate over the leading opening 454 [wherein] the bars are rigid enough to support the epiglottis." Column 10, lines 43 to 50. In addition, the '199 patent states that "a grate may cover the opening to keep the epiglottis and other tissue out of the opening." Column 5, lines 29 to 30, emphasis added.

Applicant therefore respectfully maintains that, by virtue of the fact that the gratings of the present application and the '199 patent perform the same function and in the context of the claims are directed to the same patentable invention, an interference should be declared between claims 21, 22, 24 to 30 and 32 to 44 of the present application -- which include the limitation of "[a] grate partially covering the opening" -- and claims 1 to 39 of the '199 patent -- which include the limitation of "[a] grate covering the opening."

IV. Conclusion

Applicants respectfully submit that all of the pending claims of the present application are now in condition for allowance. Prompt reconsideration and allowance of the present application, and the declaration of the above-referenced interference proceeding, are therefore earnestly solicited.

V. Fees

The Commissioner is authorized to charge any necessary fees or credit any overpayments under 37 C.F.R. §§ 1.16 and 1.17 to Deposit Account No. 11-0600.

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Respectfully submitted,

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